

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Case No.: 2:06-cr-00160-APG-RJJ

Plaintiff

Order Denying Motion for Compassionate Release

V.

[ECF No. 191]

FALASHA ALI,

Defendant

Defendant Falasha Ali moves for compassionate release because he is at a greater risk of his illness from COVID-19. ECF No. 191.

A sentencing court's ability to modify or reduce a sentence once imposed is seriously limited.¹ The compassionate-release provision of 18 U.S.C. § 3582(c)(1)(A)(i) allows a judge to reduce a sentence based on "extraordinary and compelling reasons" after the defendant has failed to convince the Bureau Of Prisons (BoP) to bring such a motion on his behalf.² The court must consider the factors in 18 U.S.C. § 3553(a) "to the extent that they are applicable."³ Any sentence reduction also must be "consistent with applicable policy statements issued by the Sentencing Commission,"⁴ including the requirement that the defendant "is not a danger to the safety of any other person or to the community."⁵

¹ See *United States v. Penna*, 319 F.3d 509, 511 (9th Cir. 2003) (exploring Federal Rules of Criminal Procedure 35 and 36); 18 U.S.C. § 3582(c).

² 18 U.S.C. § 3582(c)(1)(A)(i).

3 Id.

$|^4 Id.$

⁵ U.S.S.G. § 1B1.13(2).

1 Ali has hypertension and kidney disease, which place him at a higher risk of serious
2 illness from COVID-19. But the BoP has recently done a better job of controlling the spread of
3 the virus, and has rolled-out the vaccine to inmates and prison staff. The most-current report for
4 Pollock USP (where Ali is incarcerated) shows that only three staff members and no inmates
5 with active cases at this time.⁶

6 Most importantly, Ali was offered the COVID-19 vaccine but refused. ECF No. 200 at
7 56. Numerous judges “have ruled with consistency that an inmate’s denial of a COVID-19
8 vaccination weighs against a finding of extraordinary and compelling circumstances.”⁷ I agree.
9 The current medical evidence confirms that Ali can adequately protect himself against the
10 potentially dangerous effects of COVID-19 by taking the vaccine. His choice not to do so does
11 not entitle him to a “get out of jail free” card.

12 I cannot find Ali’s situation to be an “extraordinary or compelling circumstance” that
13 warrants his release. I therefore order that his motion compassionate release [ECF No. 191] is
14 **DENIED.**

15 DATED this 1st day of June, 2021.



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17 ANDREW P. GORDON
18 UNITED STATES DISTRICT JUDGE
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23⁶ See <https://www.bop.gov/coronavirus/> (last checked 6/1/21).

⁷ *United States v. Baeza-Vargas*, No. CR1000448010PHXJAT, 2021 WL 1250349, at *3 (D. Ariz. Apr. 5, 2021) (collecting cases).